Proof of ownership is necessary under section 28 (1) of the Ordinance. It is very clear to me that in every case coming under that sub-section there must be strict proof as to who is the owner before any order can be made under it. There was no strict proof, but the Magistrate just ordered that the watch be returned "to the owner". That order was bad.

I do not need to go into the second ground of appeal as to whether there was unlawful pawning or not. I only say that there ought to be strict proof of that as well, and I express the hope that magistrates will note both of these points.

The result is that the conviction is upheld, and the order for the return of the watch must be cancelled. This order is without prejudice to any right of the Crown or of the Police.

Conviction upheld.

(Appellate Criminal Jurisdiction)

Murison C. J., Whitley and Terrell JJ.

January 14, 1933.

LAM LOCK ..... **Appellant.**

v.

REX (ROSY GEE) ..... **Respondent.**

(Singapore Magistrate's Appeal No. 60 of 1932)

Pawnbrokers Ordinance No. 61, Section 28-41—Criminal Procedure Code, Section 421.—Stolen goods pawned—Claims of owner and of pawnbroker.

The Pawnbrokers Ordinance is complementary to and does not oust, the provisions of the Criminal Procedure Code.

When a pawnbroker hands over property to the police which is suspected to have been stolen, the property may be taken before a Court.

The Court must satisfy itself by hearing evidence as to who is entitled to possession of the article, who is the owner and the circumstances under which the article was lost or found.

To do this the Court should procure the attendance of the pawnbroker under Section 28(2) and satisfy itself that the article was unlawfully pawned under Section 31(1).

Semble. The person claiming the article as against the pawnbroker should also be notified to attend the Court at the same time as the pawnbroker.

Rosy Gee reported to the police that she had on 13th November 1932 been robbed of a gold chain with a diamond and gold pendant attached.

The property was described in a police Circular issued on 15th November 1932 under Section 41 (1) of Ordinance 61 (Pawnbrokers).

The same morning the appellant brought the property to the police in compliance with Section 41 (2) of the said Ordinance.

The thief was not arrested.

On 18th November 1932 the police brought Rosy Gee and the appellant before the District Judge with a view to his making an order for the disposal of the property.

The appellant made the following statement to the District Judge.

"A Cantonese man pawned these articles. I did not know him. I do not dispute that they may belong to Rosy Gee.

As soon as I checked the property by the circular I brought it to the police station."

No other statement or evidence was recorded by the District Judge who made an order.—("Jewellery to complainant.")

In his grounds of decision the District Judge said

"(3) In coming to my decision I directed my attention to Criminal Procedure Code, Section 421 and to Section 28 (1) (c) of Ordinance 61 (Pawnbrokers).

(4) I believed the applicant who said that the article was hers and had been stolen from her and that the theft had been at once reported.

(5) Nothing was alleged about her conduct which justified me in refusing to return to to her her own property."

The pawnbroker appealed.

Campbell for Appellant. Police can deal with pawns only under Ordinance No. 61 (Pawnbrokers). No power of seizure except under Section 43 (2) which has no application to present case. Police have no power to take pawns which have come to their hands to a Criminal Court to have the Civil rights of the parties determined. The Police Court has no power to deal with a pawn under Section 421 of the Criminal Procedure Code. *Rex v. Yap To*, (1909), 11 S.S.L.R. 73.

Mc Elwaine, K. C. (Deputy Public Prosecutor) referred to *R. v. Chop Sum Thye* (1927). There were "proceedings" within the meaning of Section 28 (1) (c).

In handing the property to the police Appellant obviated the necessity for the Police to obtain a Search Warrant under Section 63 Criminal Procedure Code under which warrant the property must be brought before the Court.

Evidence should have been recorded of ownership, theft, and absence of authority from the owner to pawn the articles but it is clear such evidence would have been given had Rosy Gee been sworn.

Campbell in reply.

Cur. Ad. Vult.

Murison, C. J—I agree with the judgment of Whitley J. which I have read.

Whitley, J.—This was an appeal from an order made by the First Magistrate under section 421 of the Criminal Procedure Code that the Police officer who had seized a certain jade pendant should deliver the same to the applicant Rosy Gee.

It was agreed that no appeal lay in this case because it was not a criminal cause or matter and the case should be treated as on Revision under section 312 A. The

record is very scanty but from what was stated at the Bar it appears to be admitted that the material facts are as follows:—

The applicant Rosy Gee reported the theft of the pendant whereupon a description of it was inserted in one of the lists of stolen property sent by the police to pawnbrokers under section 41 of Ordinance No. 61 (Pawnbrokers). A pawnbroker Lam Lok with whom it had been pawned took the pendant to the Detective Station where the Inspector took charge of it and reported the matter to the First Magistrate under Section 421 of the Criminal Procedure Code for his orders as to the disposal of the property.

The applicant appeared before the Magistrate and stated (but not on oath) that the pendant was hers and had been stolen. This pawnbroker stated that an unknown Cantonese had pawned the pendant with him and that he did not dispute that it might belong to the applicant.

The Magistrate ordered that the pendant be handed to the applicant.

Section 421 reads as follows:—

> 421 (1) The seizures by any police officer of property taken under section 27 or alleged or suspected to have been stolen or found under circumstances which create suspicion of the commission of any offence shall be forthwith reported to a police Court which shall make such order as it thinks fit respecting the delivery of such property to the person entitled to the possession thereof or, if such person cannot be ascertained, respecting the custody and production of such property.
>
> (2) If the person so entitled is known, the Police Court may order the property to be delivered to him on such conditions, if any, as the Police Court thinks fit.

Section 41 of the Pawnbrokers Ordinance reads:—

> 41 (1) Information as to property lost, stolen or otherwise fraudulently disposed of shall be given by the police, as soon as possible after such loss or fraud, to all pawnbrokers, with lists and descriptions of the same.
>
> (2) If any property answering such lists and description is in the possession of any pawnbroker or is thereafter offered to or shown to any pawnbroker, he shall, without unnecessary delay, give information to that effect at the nearest police station or to any police officer, with the name and address of the person in whose possession the property was seen, and in default thereof he shall be liable to a fine not exceeding one hundred dollars.

Mr. Campbell for the pawnbroker argued that the general law as laid down in the Criminal Procedure Code does not apply to matters provided for in a special ordinance such as the Pawnbrokers Ordinance and that consequently the police can only deal with stolen property found in the possession of a pawnbroker under that ordinance and not under the Code. He contended that as section 41 merely requires pawnbrokers to give information to the police and does not give the police any powers of seizure it follows that the police cannot seize articles suspected to have been stolen which are in the possession of a pawnbroker, in other words that a pawnbroker is put in a privileged position as compared with the rest of the community and is exempted from liability to be dealt with under the provisions of the Procedure Code. He relied upon the case of *Leicester v. Cherryman*, (1907). 2 K.B. 102 as tending to show that the owner of stolen property which is pawned can only recover it by taking action in the Civil Courts. The case however as Ridley J. points out was not a case of the owner applying to have his property handed to him and it goes no further than to decide that the Pawnbrokers Act does not deprive a person of his ordinary civil remedies.

It seems to me that the Pawnbrokers Ordinance is complementary to the Criminal Procedure Code and does not oust its provisions in so far as they affect pawnbrokers. Whilst leaving them amenable to the general law as to stolen property it imposes upon them certain additional responsibilities necessitated by the special nature of their trading, and the effect of section 41 would seem to be that whilst the pawnbroker like any other person is liable to have stolen goods found in his possession seized under a search warrant (or under section 42 even without a search warrant) he is further liable to a fine if he does not give information to the police in certain cases.

Section 421 provides a convenient expeditious and inexpensive procedure which must I think be available to all owners of property which is stolen and recovered irrespective of whether it is recovered from a pawnbroker or from a person who is not a pawnbroker. Conditions may be imposed and any person aggrieved by an order made under this section can apply to have his case considered by the Supreme Court under the powers of revision conferred by section 312A.

I am therefore of opinion that the matter was properly brought before the Magistrate under section 421.

It was argued that there was no seizure as the pawnbroker took the pendant to the Detective Station. I do not think that argument is sound. It seems to me that there is a seizure as soon as the police officer takes possession of the article as being suspected to have been stolen, no matter whether it is handed to him by the pawnbroker or seized by him under his powers of search upon having received information from the pawnbroker under section 41. If the pawnbroker had not himself produced the article the police officer would immediately have gone to the pawnshop and taken it himself. The result is the same either way.

The Magistrate has then to satisfy himself who is the person entitled to possession and he should do this by recording evidence as to ownership and the circumstances under which the article was lost and found. This enquiry by the Magistrate is a judicial proceeding as defined under section 2 of the Criminal Procedure Code so that section 28 (1) (c) and (2) of the Pawnbrokers Ordinance then applies.

This section reads:—

> 28 (1) (c) If in any proceedings before a Police or other Court it appears to the Court that any goods and chattels brought before the Court have been unlawfully

pawned with a pawnbroker, the Court, on proof of the ownership of the goods and chattels, may, if it thinks fit, order the delivery thereof to the owner either on payment to the pawnbroker of the amount of the loan or any part thereof, or without payment thereof or any part thereof, as to the Court, according to the conduct of the owner and the other circumstances of the case, seems just and fitting.

(2) The Court may also adjourn the proceedings for the attendance of the pawnbroker, and may summon the pawnbroker to attend at the adjourned hearing, and if, after hearing the pawnbroker, the Court is of opinion that the pawnbroker has not exercised due care in taking in pawn any stolen property, the Court may order the pawnbroker to pay a fine not exceeding one hundred dollars.

It seems to me that the proper procedure for the Magistrate to follow will then be to procure the attendance of the pawnbroker under section 28 (2) and satisfy himself that the article was unlawfully pawned under section 31 (1) which provides that:

"Any person who knowingly and designedly pawns with a pawnbroker anything being the property of another person, the pawner not being employed or authorised by the owner thereof to pawn the same, shall be liable to a fine not exceeding one hundred dollars."

He should then record his finding that the article was unlawfully pawned and who is the owner and then make his order.

In the case under consideration these formalities were not complied with and I would send the case back to the Police Court for rehearing.

Terrell, J. I agree.

Case remitted.

Solicitors for the Appellant—*John G. Campbell & Co.*

(Appellate Criminal Jurisdiction)

Murison C. J., Whitley and Terrell, JJ.

January 14, 1933.

PALLAK NATH SINGH.....Appellant

v.

REX.....Respondent

(Singapore Magistrate's Appeal No. 57 of 1932)

Evidence—Words written by suspect at request of Police—Not a statement—Criminal Procedure Code Section 121.

Compensation—Imprisonment in default—Criminal Procedure Codes. 432.

A police inspector invited a person suspected of forgery to write certain names and words on a piece of paper. The magistrate admitted the paper in evidence as evidence of accused's handwriting with a view to comparing it with certain writing on the forged document.

Held:—The writing was not a statement within the meaning of Section 121, Criminal Procedure Code and was properly admitted in evidence.

The Magistrate convicted the accused and imposed sentence of imprisonment and also ordered the accused to pay compensation under section 432 Criminal Procedure Code and sentenced him to additional rigorous imprisonment if the compensation was not paid.

Held:—Rigorous Imprisonment may be imposed for non-payment of compensation which an accused person is ordered to pay under Section 432 of the Criminal Procedure Code.

Appellant was convicted before Charles Wilson Esq., District Judge Singapore on 17th November 1932 for that he at Singapore did forge a memorandum dated 25th July 1932, purporting to be addressed to the Superintendent of Police, Benares, asking for the arrest of Kishore Singh, Raghu Nandan Singh and Jokhu Khan which memo purports to be signed by H. R. Onraet, Inspector General of Police, Singapore, and thereby committed an offence punishable under Section 465 of the Penal Code and was adjudged to pay $150 or 3 months compensation to each of the men who were arrested in India. $250 fine or 3 months in lieu and 2 years R. I. in any case. Imprisonment consecutive if fine not paid.

The Memo was as follows:—

MEMO.

From:—The Inspector General of Police,
Police Department,
Singapore,
Straits Settlements.

To:—The Superintendent of Police,
Police Department,
Benares Div.,
India.

Sir,

I have the honour to notify you that the following named persons were under Police Warrant and have left the Colony without our knowledge. These men have assaulted the Singapore Municipal Sanitary Inspectors for arresting their cows while they were tied at unauthorised town area. The Municipal President Mr. Whitley Bartley applied for the warrant on the 16th June, 1932.

I wish you to investigate into the matter and arrest them, after that direct them to Calcutta. From there I shall send my man to bring them back here.

1. Kishore Singh s/o Jayee Singh
   Village—Nathupur.....Police Station—Ballua.
2. Raghu Nandan Singh s/o Ram Sewak Singh
   Village—Nathupur.....Police Station—Ballua.
3. Jokhu Khan s/o Phaka Khan
   Village—Tanda Kala..... Police Station—Ballua.

These men were milk-seller here in Singapore.

Thanking you in anticipation,

Yours faithfully,
R. H. ONRAET
Inspector General of Police.
25.7.32.

In the course of inquiry as to the author of the forged memorandum Asiatic Inspector Judge interviewed the appellant. In the course of the conversation between them the appellant said that he had written a letter to the police.

This letter formed no part of the case against the appellant. The appellant was asked to prove that he had written that letter by writing certain names and words dictated by Inspector Judge.

Among the names and words so dictated to and written by appellant was the name "R. H. Onraet". This name as written by appellant bore a striking resemblance to the forged signature on the memorandum.

In the course of a search of accused's premises a copy of a letter was found addressed to Whitley Bartley